

ITEL

August 24, 1988

IteI Rail Corporation

55 Francisco Street
San Francisco, California 94133
(415) 984-4000

RECORDATION NO. 10129-3 PM 1988

Hon. Noreta R. McGee
Secretary
Interstate Commerce Commission
Washington, DC 20423

SEP 1 1988-3 24 PM

INTERSTATE COMMERCE COMMISSION

Re: Amendment No. 7 to Lease Agreement dated July 26, 1978,
between IteI Rail Corporation and Minnesota, Dakota and
Western Railway Company

Dear Ms. McGee:

On behalf of IteI Rail Corporation, the above instrument, in four (4) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$13 recordation fee.

Please record this Amendment under the Lease Agreement dated July 26, 1978, between IteI Rail Corporation and Minnesota, Dakota and Western Railway Company, which was filed with the ICC on February 22, 1979, under Recordation No. 10129.

The parties to the aforementioned instrument are listed below:

IteI Rail Corporation (Lessor)
55 Francisco Street
San Francisco, California 94133

Minnesota, Dakota and Western Railway Company (Lessee)
One Jefferson Square
Boise, Idaho 83728

This Amendment adds to the Lease Agreement up to one hundred sixteen (116) boxcars bearing reporting marks from within the series MDW 1800-1915.

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

Patricia Schumacker

Patricia Schumacker
Legal Department

06/03/88

AMENDMENT NO. 7

RECORDATION NO. 10129-M

SEP 1 1988 - 3 42 PM

INTERSTATE COMMERCE COMMISSION

THIS AMENDMENT NO. 7 (the "Amendment") to that certain Lease Agreement, as amended, (the "Agreement") made as of July 26, 1978, between Itel Corporation, Rail Division and MINNESOTA, DAKOTA & WESTERN RAILWAY COMPANY ("Lessee") is made as of this 03rd day of August, 1988 between ITEL RAIL CORPORATION, as successor in interest to Itel Corporation, Rail Division ("Lessor"), and Lessee.

R E C I T A L S:

- A. Lessor and Lessee are parties to the Agreement pursuant to which six hundred ninety-nine (699) boxcars (together with the boxcars listed on the Equipment Schedule attached hereto, the "Boxcars") described therein have been leased to Lessee.
- B. Lessor and Lessee desire to add a number of Cars to be determined by Lessor, not to exceed one hundred sixteen (116) Boxcars, bearing reporting marks from within the series MDW 1800-1915 to the Agreement and to place such Cars into an assignment pool on the lines of a third party for a period of time.

NOW THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties hereto agree to amend the Agreement as follows:

1. All terms defined in the Agreement shall have their defined meanings when used in the Amendment.
2. Schedule H attached hereto is hereby added to the Agreement.
3. With respect to the Boxcars described on Schedule H only, the last sentence of Subsection 2.A. of the Agreement is replaced by the following:

"The term of the Agreement with respect to the Boxcars described on Schedule H shall commence upon delivery of each such Boxcar pursuant to Subsection 3.A., as amended hereinbelow, and shall expire on October 29, 1993."

4. With respect to the Boxcars described on Schedule H, Subsection 3.A. is replaced by the following:

"3. Supply Provisions

- A. Lessee hereby approves the specifications of the Boxcars delivered to it by Lessor. Lessor shall, at its expense, remark the Boxcars with the railroad markings of Lessee in compliance with all applicable regulations. Each Boxcar shall be deemed delivered and subject to the terms and provisions of this Agreement at 12:01 a.m. on the date and at the location such Boxcar is remarked

('Delivery'). After the Boxcars have been remarked, the Cars shall be moved to the railroad lines of the Union Pacific Railroad ("UP") at no cost to Lessee as soon as is consistent with mutual convenience and economy. Notwithstanding that Lessee may not have immediate physical possession of the Boxcars leased hereunder, Lessee agrees to pay the rent set forth in this Agreement. To move the Boxcars to Lessee's railroad line and to ensure optimal use of the Boxcars after the Initial Loading (as hereinafter defined), Lessor agrees to assist Lessee in monitoring Boxcar movements and, when deemed necessary by Lessee, to assist in the issuance of movement orders with respect to such Boxcars to other railroad lines in accordance with Interstate Commerce Commission ("ICC") and Association of American Railroads ("AAR") interchange rules adopted by the AAR Mechanical Division, Operations and Maintenance Department ("Interchange Rules"). If Lessor incurs expenses in having other railroads move Boxcars in accordance with this Section with Lessee's request and approval, except for any expenses incurred in the initial delivery of such Boxcars pursuant to this Section, Lessee shall reimburse Lessor for such expenses within ten (10) days of receipt of an invoice from Lessor. For the purposes hereof, the term "Initial Loading" as to each Boxcar, shall mean "the date such Boxcar is delivered to UP."

5. With respect to the Boxcars described on Schedule H, Subsection 3.C. is replaced by the following:

"C. Additional Boxcars shall be leased from Lessor only upon the mutual agreement of the parties. During the term of this Agreement, Lessor may, at its expense, replace any or all of the Boxcars with similar boxcars upon prior written notice from Lessor to Lessee; provided, however, that any such replacement shall not prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor."

6. With respect to the Boxcars described on Schedule H, the words "as set forth in Exhibit A attached hereto" shall be added to Subsection 6.B. after the words "running repairs". In addition, a new sentence shall be added to the end of Subsection 6.B. as follows:

"Should the AAR Mechanical Department inspect or investigate Lessee's maintenance facilities and determine that restitution is due owners of equipment repaired at Lessee's facilities, then Lessor shall be entitled to such restitution pursuant to AAR Rule 120 for all equipment owned or managed by Lessor, including the Boxcars, that were repaired at Lessee's facilities."

7. Lessor consents to Lessee entering into an assignment agreement with UP in the form of Exhibit B attached hereto ("UP Assignment"), provided that Lessor shall perform Lessee's duties under the UP Assignment, except the duties described in the (5th) paragraph therein, and further provided that Lessee shall, exercise its option to terminate, extend, renegotiate or request free storage under the UP Assignment upon Lessor's instructions or consent, shall not exercise any such options without Lessor's consent, and shall promptly inform Lessor within a reasonable

time before any such options may be exercised, of the existence of the option and all pertinent facts.

8. The following shall apply with respect to the Boxcars described on Schedule H only:

"(a) Subsections 7.A.(i) and 7.A.(ii) shall be as follows:

- (i) Subject to adjustments for Lessee providing insurance for the Boxcars, Lessor shall receive on Lessee's behalf all payments including but not limited to mileage charges, straight car hire payments and incentive car hire payments (all of which payments made to Lessee are hereinafter collectively referred to as "Payments") made to Lessee by other railroad companies for their use or handling of the Boxcars described on Schedule H if the Payments earned by the Boxcars described on Schedule H in the aggregate for any calendar year are equal to or less than an average of

(such amount shall be known as the 'Itel Base Rent'). For the purpose of this Agreement, Utilization of the Boxcars shall be determined by a fraction, the numerator of which is the aggregate number of days in each calendar year that car hire payments are earned by Lessee on the Boxcars, commencing from the Initial Loading, and the denominator of which is the aggregate number of days in each year that the Boxcars are on lease to Lessee, commencing from the Initial Loading.

- (ii) In the event that the Payments earned by the Boxcars described on Schedule H in the aggregate during any calendar year exceed the Itel Base Rent, Lessor shall receive an amount equal to the Itel Base Rent and Lessee shall receive all amounts earned by the Boxcars in excess of the Itel Base Rent."

10. With respect to the Boxcars described on Schedule H only, new subsections 7.I. and 7.J. shall be added to the Agreement as follows:

"I. Unless Lessee receives Lessor's prior written consent, Lessee shall not take any action which diminishes the base hourly rate or the base mileage rate listed for the Boxcars in the January 1986 edition of the ICC Official Railway Equipment Register (each rate a 'Boxcar Rate', collectively, the 'Boxcar Rates').

"J. If the Payments earned during any calendar quarter are less than or equal to an average of

Lessor may, at its option, and upon sixty 60 days written notice, terminate the Agreement as to such Boxcars as Lessor shall determine."

11. With respect to the Boxcars described on Schedule H only, a new sentence is hereby added to Section 10 of the Agreement as follows:

→ The Itel Base Rate shall be prorated for the first and last years that the Schedule H Boxcars are in service under this Amendment No. 7.


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"However, if any Boxcars are terminated by Lessor pursuant to Subsection 7.J., Lessor shall be responsible for the costs associated with the termination of such Boxcars as described therein."

12. With respect to the Boxcars described on Schedule H only, the following sentence shall be added to the end of Section 10:

"Lessee shall insure that each Boxcar returned to Lessor shall be ~~(i) in the same or better condition as when delivered to Lessee, normal wear excepted,~~ (ii) in interchange condition in accordance with AAR and FRA regulations, and (iii) suitable for loading and free from all accumulations or deposits from commodities transported in the Cars while in the service of Lessee."

13. Nothing herein contained shall (i) be deemed to constitute a waiver or otherwise modify, affect or impair any sums due to Lessor or Lessee with respect to any Boxcar, including the Boxcars described on Schedule H, under the terms and conditions of the Agreement or (ii) be deemed to constitute a waiver or otherwise modify, affect or impair the powers, rights, or remedies vested in or available to Lessor or Lessee with respect to any Boxcar under the terms and conditions of the Agreement.
14. Except as expressly modified by the Amendment, all terms and provisions of the Agreement shall remain in full force and effect with respect to all of the Boxcars subject to the Agreement.
15. This Amendment may be executed by the parties hereto in any number of counterparts, and all counterparts taken together shall be deemed to constitute one instrument.

ITEL RAIL CORPORATION

MINNESOTA, DAKOTA & WESTERN
RAILWAY COMPANY

By: 

Title: President

Date: 9/23/88

By: 

Title: Vice President

Date: 6/10/88

STATE OF CALIFORNIA)
)ss:
COUNTY OF SAN FRANCISCO)

On this 23rd day of August, 1988, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of ITEL RAIL CORPORATION, that the foregoing Amendment No. 7 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon L. Van Fossan
Notary Public



STATE OF IDAHO)
)ss:
COUNTY OF ADA)

On this day of June 14, 1988, before me personally appeared Robert W. Walters, to me personally known, who being by me duly sworn says that such person is Vice President of MINNESOTA, DAKOTA & WESTERN RAILWAY COMPANY, that the foregoing Amendment No. 7 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Robb Lewis
Notary Public

SCHEDULE H

Itel Rail Corporation hereby leases the following Cars to Minnesota, Dakota & Western Railway Company subject to the terms and conditions of that certain Lease Agreement dated as of July 26, 1978, as amended.

AAR Mech Desig	Description	Numbers	Length	Dimensions		Doors Width	No. of Cars
				Inside Width	Height		
XP	60', 100-ton Plate E cushion underframe	MDW 1800- 1915	60'8"	9'6"	11'6"	16'	to be deter- mined, not to exceed 116

ITEL RAIL CORPORATION

MINNESOTA, DAKOTA & WESTERN
RAILWAY CORPORATION

By: 

By: 

Title: President

Title: 6/10/88 Vice President

Date: 8/23/88

Date: 6/10/88

EXHIBIT A

Running Repairs - Boxcars

Angle Cocks	Wheels
Air Hose	Yokes
Train Line	Knuckles/Pins
Operating Levers and Brackets	Slack Adjuster
Sill Steps	Couplers
Grab Irons	Draft Gears
Brake Shoes	Coupler Carriers
Brake Shoe Keys	Center Plates (Not Replacement)
Brake Connecting Pin	Cotter Keys
Brake Head Wear Plates	Roller Bearing Adapters
Air Brakes	Air Hose Supports
Hand Brakes	
Brake Beams and Levers	
Truck Springs	
Door Hardware (Not Replacement)	



Minnesota, Dakota & Western Railway Company

P.O. Box 7747
Boise, Idaho 83707

a Boise Cascade
Subsidiary

Contract # _____

C.D. No. 54792-20

Exhibit B

ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AGREEMENT is made and entered into as of this 15 day of August, 1988, between MINNESOTA, DAKOTA & WESTERN RAILWAY COMPANY ("Assignor") and UNION PACIFIC RAILROAD and MISSOURI PACIFIC RAILROAD (hereinafter collectively referred to as "Assignee").

Assignor and Assignee agree as follows:

1. A. Assignor shall supply Assignee with a number of cars to be determined by Assignor, not to exceed one hundred sixteen (116) XP boxcars, bearing the reporting marks from within the series MDW 1800-1915 (the "Cars"). Upon Assignor's instruction, and not without Assignor's instruction, Assignee shall place the Cars into an assignment pool on Assignee's railroad lines at Baum, Oregon, as provided for in Car Service Rule 16 and under the provisions of Car Service Directive 145 of the Code of Car Service Rules, AAR Circular No. OT-10.

B. Assignor will give Consolidated Rail Corporation, CSX Transportation, Inc., Norfolk Southern Corporation, Assignee and other carriers the appropriate authority to reload the Cars back to stations in Idaho, Oregon and Washington, but only when routed over the lines of Assignee via North Platte, Nebraska. Reloads to destinations other than those outlined above may be permitted on a case by case basis but not without prior approval of Assignor.
2. A. The term ("Term") of this Assignment Agreement, with respect to each Car, shall commence on the day that such Car is first interchanged onto Assignee's lines after the full execution of this Assignment Agreement ("Delivery") and shall expire as to all the Cars at 11:59 p.m. on October 29, 1991.

B. Upon the Delivery of the final Car, Assignor shall issue to Assignee a fully-executed Certificate of Delivery in the form of Exhibit A hereto.
3. Assignee shall comply with the handling carrier's obligations under AAR Interchange Rules while the Cars are in Assignee's possession.
4. If any Car returns to Assignor's line as a result of Assignee not filing the assignment pool code properly, Assignee shall be responsible for all costs associated with returning such Car to Assignee. Assignor shall use its best efforts to prevent any Car from being interchanged onto its lines during the term of the Assignment Agreement, including advising Assignor's connecting carrier that the Cars have been placed into an assignment pool on Assignee's lines and that the connecting carrier should not return such Cars to Assignor during the term of the Assignment Agreement.

5. When used in this Assignment Agreement, each of the following terms shall have the definitions indicated:
- A. When used in this Assignment Agreement, the term "Eligible Lines" shall be defined as the railroad lines owned and operated by Assignee as of June 1, 1988. Unless otherwise agreed by Assignor and Assignee, any lines purchased by Assignee or added to the Eligible Lines during the term of the Assignment Agreement are deemed to be the lines of another railroad company (a foreign road) for the purposes of determining Revenues (as defined hereinbelow). If, at any time during the term of the Assignment Agreement, Assignee operates lines other than the Eligible Lines, then Assignee shall supply Assignor with records which distinguish the movement of each Car on the Eligible Lines from the movement of such Car on the other railroad lines operated by Assignee.

6.

If, during any calendar month, the Cars, in the aggregate, remain on the Eligible Lines in excess of the Assignee shall pay to Assignor an amount for each excess hour equal to the per diem and mileage revenues the Cars would have earned at the hourly and mileage car hire rates specified for such Cars in the Hourly and Mileage Car Hire Rate Table published in the Official Railway Equipment Register.

7. The following procedure will be used to deduct relief up to the Maximum Hours: Assignee shall pay car hire based upon all hours and mileage earned each calendar month, but shall deduct relief up to the Maximum Hours by making a one-line money adjustment from the monthly car hire report ("Report") with relief detail contained on the deduction sheets attached to the Report. The hours and miles being deducted shall not be reported via the AAR Car Hire Data Exchange Tape.
8. During the Term, Assignor may, at its expense, replace any or all of the Cars with similar equipment upon not less than ten (10) days' prior written notice to Assignee.
9. Assignor is responsible for normal maintenance and repair expenses except as provided below. Assignee shall be responsible for and shall pay all costs and expenses associated with maintenance and repair, including transportation costs, in the event such maintenance (i) was occasioned by the fault of Assignee; (ii) results from loading, unloading or use on the Eligible Lines other than permitted under this Agreement; or (iii) arises in those instances in which the Interchange Rules would assign responsibility to Assignee for the loss, damage, destruction or liability requiring such Maintenance. Assignee shall promptly notify Assignor of any damage to, defect in, need of repair to, or destruction of any Car. For any Car required to be shopped for repairs, Assignee shall request disposition and handling instructions from Assignor; and from and after the date of such request, car hire (time and mileage) shall be governed by applicable Car Hire and Car Service Rules 7 and 8. In no event shall Assignee place any Car for repair at a private contract repair facility

or by a private contractor on the property of Assignee without Assignor's prior approval. Any such repair must be performed under the direction and control of Assignor.

10. Upon termination or expiration of this Assignment Agreement, Assignee shall ensure that the Cars are in the same or as good condition, order and repair as when delivered to Assignee, normal wear excepted, and are free of all accumulations or deposits from commodities transported in or on the Cars while in the service of Assignee. Assignee shall remove the Cars from the provisions of Car Service Rule 16 and Car Service Directive 145, and deliver the Cars to a point on the Eligible Lines to be designated by Assignor. At Assignor's option and Assignee's expense, Assignee shall use its best efforts to provide final outbound loads for each Car.
11. Assignee's rights shall be subject and subordinate to the rights of Assignor and to the rights of any lessor, any owner or secured party under any financing agreement with respect to the Cars. Accordingly, following notice to Assignee from any such lessor, secured party or owner that an event of default has occurred at any time (including at a time prior to the effective date of this Assignment Agreement), and is continuing under such financing agreement, such party may require either or both that rentals and other sums due hereunder shall be paid directly to such party, and that the Cars immediately be returned to such party.
12. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, or when transmitted and received by telex addressed as follows:

If to Assignor:	If to Assignee:
Minnesota, Dakota & Western Railway Company c/o ITEL Rail Corporation 55 Francisco, 5th Floor San Francisco, California 94133	Union Pacific Railroad 1416 Dodge Street Omaha, Nebraska 68179
13. This Assignment Agreement may not be modified, altered, or amended, except by an agreement in writing signed by the parties.
14. This Assignment Agreement may be executed in two counterparts and such counterparts together shall constitute one and the same contract.

MINNESOTA, DAKOTA & WESTERN RAILWAY
COMPANY

UNION PACIFIC RAILROAD AND
MISSOURI PACIFIC RAILROAD

By: Q. M. Wale

By: LB O'Connell

Title: Vice President

Title: DVP Op. A. H. M.

Date: 8-15-88

Date: 8-11-88

EXHIBIT A

Certificate of Delivery

Assignment Agreement dated . 1988

<u>MDW Reporting</u> <u>Marks and Numbers</u>	<u>Date Delivered</u> <u>to Assignee</u>	<u>MDW Reporting</u> <u>Marks and Numbers</u>	<u>Date Delivered</u> <u>to Assignee</u>
1800		1843	
1801		1844	
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1803		1846	
1804		1847	
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<u>MDW Reporting</u> <u>Marks and Numbers</u>	<u>Date Delivered</u> <u>to Assignee</u>
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